IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.342 OF 2004

Bombay Hospital Trust .. Petitioner

versus

Shri Chandrika Prasad & anr .. Respondents

Mr.C.U.Singh with Mr Mahesh Londhe i/b Sanjay Udeshi & Co for Petr.

Mr S.S.Chaubal for Respt no.1 (absent when called)

CORAM : D.G. KARNIK, J

DATED : 10th August 2005.

P.C.

1. Heard learned counsel for the petitioner.

2. This writ petition is directed against the judgment and award dated 7th November, 2003 passed by the Labour Court, Mumbai answering the reference under section 10 of the Industrial Disputes Act (for short the I.D.Act) in favour of the respondents and ordering his reinstatement with

continuity of service and 50 % of the back wages.

3. The petitioner is a charitable trust which runs a well known hospital known as 'Bombay Hospital' in Mumbai. The respondent no.1 was employed by the petitioner as a workman for cleaning and polishing of tiles in the hospital. A counselling letter was issued to the respondent no.1 on 3rd January 1991 for breaking the tiles while polishing. The angry respondent no. 1 went to the lady house keeping manager on the first floor on 4th July 1991 and accused her of instigating complaints against him. In the presence of supervisor Mr.Jaswant Singh and typist Miss Sangita he threatened her that he would prevent her walking on the roads. A charge sheet was issued to the respondent no. 1 on 9th July 1991 for the alleged misconduct of threatening the lady house keeping manager in the manner mentioned above. After holding a regular inquiry in which the respondent no.1 was found to be guilty an order of discharge was issued to the respondent no. 1 by way of punishment. Being aggrieved by the punishment imposed the respondent no. 1 approached the Labour Commissioner who made a reference under section 10 of the Act for adjudication by the

Labour Court. By an order dated 7th November 2003 the Labour Court ordered reinstatement of the respondent no.1 with continuuity of service and 50 % of the wages. That order is impugned in this petition.

4. The Labour Court firstly considered whether the inquiry held against the respondent no. 1 was fair and proper and by an award, part I, dated 14th March 1997 held that the inquiry conducted against the respondent no. 1 was fair and proper. Both the parties were thereafter were directed to lead their evidence if any, on other issues. After scanning and evaluating the evidence adduced before the enquiry officer the Labour court came to the conclusion that though the inquiry was fair and proper the findings of guilt recorded by the enquiry officer were not just and proper. In view of this an opportunity was given to the petitioner to justify the order of discharge for adducing the evidence before the Labour Court. The petitioner thereafter examined two more witnesses namely Mr Jaswant Singh in whose presence threats were given and Commodore R.P.Rai. The respondent no. 1 also examined himself. After considering the evidence

adduced by the parties the Labour Court came to the conclusion that charges against the respondent no.1 were proved. In para 15 of the order the labour court has stated :

> " In my view both charges are proved. Evidence of a single witness Jaswant Singh is sufficient to hold all charges of misconduct are proved. "

However, after holding that all the charges were proved the Labour Court held that the punishment of discharge from service was disproportionate to the misconduct and therefore ordered reinstatement with continuity of service and 50 % back wages. That order is impugned in this petition.

5. Learned counsel for the petitioner submits that the Labour Court erred in interferring with the quantum of the punishment without recording adequate and sufficient reasons. He submits that if any subordinate workmen threatens a supervisory staff and that too a threat of preventing the supervisory staff from walking on the roads (implying that physical harm would be caused to the supervisory staff outside the place of employment) then no leniency can be shown for such acts of misconduct. Such acts are not only acts of

insubordination but would threaten the smooth administration of the hospital which is essential for the well being of the patients. Any leniency would set up a bad precedent and a ward boy may tomorrow threaten the nurses and even doctors on duty. The discretion which was exercised by the management in imposing punishment of discharge was proper and the Labour Court ought not to have interfered in the quantum of punishment without their being any valid reason. Counsel further submits that no evidence of extenuating circumstances was ever adduced and that was not the ground on which the Labour Court reduced the punishment. In particular he invited my attention to the reasons given by the labour court for reducing the punishment which in verbatim are extracted below :

> " To my mind, the second party might have used threatening language. But, the second party has not committed act of dire consequences. No person of ordinary prudence will come to the conclusion that punishment of discharge is justifiable on the part of the first party. The first party could have inflicted punishment of four days suspension as per model standing orders on the second party. "

6. The substance of the reasoning of the Labour Court appears to be that the lady house keeping

manager was only threatened and not actually assaulted. In my view, to insist for the commission of assault for inflicting of the punishment would be improper. If a serious threat of physical harm is issued by a workman to a member of supervisory staff in presence of other subordinates the very morale of the supervisory staff is likely to be adversely affected. The supervisory staff may thereafter shun taking action against the erring workman. Therefore the fact that there were only threats of assault and assault was not committed is no ground for interfering with the punishment imposed by the management.

7. No doubt it is true that after introduction of section 11-A in the I.D.Act certain amount of discretion is vested with the Labour Court/Industrial Tribunal for interfering with the quantum of punishment awarded by the management where a workman is found guilty of a misconduct. The area of discretion is well defined in the judgment of the Supreme Court rendered in Mahindra and Mahindra Ltd vs N.B.Narawade reported in 2005 (1) CLR 803. In that case the workman was dismissed for abusing the supervisory staff in

filthy language without any provocation. The labour court came to the conclusion that the punishment imposed was harsh and improper and held that denying of 1/3rd of back wages would be sufficient punishment. The labour court accordingly ordered reinstatement with 2/3rd back wages. A single Judge of the High Court dismissed the writ petition holding that denial of 1/3rd back wages was good punishment as it would act as deterrent and reformative. The Division Bench confirmed the order with a modification that 60% of the back wages should be denied by way of punishment. Reversing the judgment of the Division Bench the Supreme Court held that the discretion under section 11-A of the Act cannot be used to reduce the punishment by way of sympathy. As regards the use of discretion under section 11-A the Supreme Court, observed :

> " The discretion which can be exercised under section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A

of the Act and reduce the punishment. "

8. The case at hand is clearly covered by these observations. In the present case, it was proved that the respondent no.1 had threatened the lady house keeping manager in the presence of Jaswant Singh, another subordinate staff. The threat was that he would see how she walks on the roads thereby indicating that physical harm would be done to her while she was without the management's protection outside the place of employment and on the streets. This was the case of not only abusive language but threats of physical harm. In Mahendra and Mahendra Ltd the Supreme Court found that discretion to set aside dismissal on the ground of use of abusive language against the supervisory staff without any provocation could not be exercised under section 11-A. If so discharge on the ground of threats issued to the managerial persons the punishment cannot be reduced in exercise of the discretion under section 11-A of the Act in the absence of any extenuating circumstances. The Labour Court should not have reduced the quantum of punishnment.

9. For these reasons, the petition succeeds. The

impugned judgment is set aside. The reference is answered in the negative. Rule is made absolute to the extent mentioned above.

D.G.KARNIK, J